

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SIREN RETAIL CORP. d/b/a STARBUCKS  
Employer

and

Case 19-RC-290608

WORKERS UNITED affiliated with SERVICE  
EMPLOYEES INTERNATIONAL UNION  
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.<sup>1</sup> The Employer's request for extraordinary relief is denied as moot.

LAUREN McFERRAN,

CHAIRMAN

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<sup>1</sup> Chairman McFerran observes that the Regional Director did not abuse his discretion by ordering a mail ballot election, for the reasons given in her separate opinion in *Aspirus Keweenaw*, 370 NLRB No. 45, slip op. 13–15 (2020). She agrees, however, that even under the majority opinion in *Aspirus*, the Regional Director's decision should be affirmed based on the increasing 14-day trend in the number of new Covid-19 cases in King County, where the Employer's facility is located.

Member Wilcox notes that she was not a Member of the Board when *Aspirus Keweenaw* was decided. She is open to considering arguments regarding modernizing the Board's election methods in a future appropriate proceeding.

Member Kaplan would grant the Employer's motion to stay the mail-ballot election and remand the case back to the Regional Director to further explain his findings that a mail-ballot election was warranted under *Aspirus Keweenaw*, 370 NLRB No. 45 (2020). The Regional Director found that the mail-ballot election was appropriate under factor two in *Aspirus* because, as of March 16, 2022, the Johns Hopkins University website indicated that the 14-day case count for King County (i.e., the case count on March 2) was 663 cases and that the "2-day" case count (i.e., the case count on March 14, which was the most recent date with available data) was 742. Based only on these two data points, the Regional Director concluded "the 14-day trend in confirmed COVID-19 cases in King County is increasing." This, however, was not a correct application of factor two in *Aspirus Keweenaw*, which allows a mail-ballot election if the 14-day trend in the number of new confirmed cases of Covid-19 in the county where the facility is located is increasing, or if the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher. See *id.*, slip op. at 5, 8 (emphasis added). Accordingly, by only comparing the 14-day case count with the case count on the most recent date, the Regional Direction failed to consider the 14-day trend as required by *Aspirus*. Accordingly, he disagrees with his colleagues' conclusion to the contrary, and he would grant the Employer's motion.

MARVIN E. KAPLAN,

MEMBER

GWYNNE A. WILCOX,

MEMBER

Dated, Washington, D.C., April 1, 2022.